INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statement	3
Argument	6
Conclusion	10

CITATIONS

Cases:

Southern Pacific Co. v. *United States*, 307 U. S. 393	6, 7
Southern Railway Co. v. *United States*, 322 U. S. 72	6, 8
United States v. *Northern Pacific Railway Co.*, 30 F. 2d 655	7

Statutes:

Act of December 12, 1945, c. 573, 59 Stat. 606, effective October 1, 1946	9
Transportation Act of September 18, 1940, 54 Stat. 898, Sec. 321 (49 U.S.C. 65(a)	9

Miscellaneous:

22 Comp. Dec. 129, 130	6

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 634

UNION PACIFIC RAILROAD COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 15-19) is reported at 87 F. Supp. 957.

JURISDICTION

The judgment of the Court of Claims was entered on January 3, 1950 (R. 19.) The petition for a writ of certiorari was filed on February 27, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1255.

QUESTION PRESENTED

The Southern Pacific Railroad had two routes between Ogden, Utah and Portland, Oregon, on both of which routes the United States, prior to 1946, was entitled to land-grant deductions. It filed tariffs with the Interstate Commerce Commission for through rates over the newer, shorter route, of which 126.14 miles, or 5.715 percent, comprised land-grant mileage. Over the older, longer route—663.16 miles of which comprised land-grant mileage, entitling the United States to 24.807 percent land-grant deduction—it filed no through rates but required that through freight moving over that route pay the aggregate of several local rates. Petitioner, which was not a land-grant railroad, had entered into a Standard Freight Land-Grant Equalization Agreement, whereby it undertook to transport government freight at the same rate to which a land-grant railroad, operating between the same points, would have been entitled. In computing the amount due petitioner for transporting certain government freight between Ogden and Portland, the accounting officers of the Government took the tariff filed by the Southern Pacific Railroad for through traffic between those points over the newer route and deducted therefrom 24.807%, the percentage deduction attributable to the land-grant mileage over the older route rather than, as urged by petitioner, the 5.715 percent deduction based on the 126.14 land-grant mileage on the newer route.

The question presented is whether the Government's method of computing the amount due petitioner under the Equalization Agreement was erroneous.

STATEMENT

The action in the Court of Claims was brought by petitioner to recover a balance of $21,068.05, alleged to be due on account of the transportation of freight for the United States under the terms of a Freight Land-Grant Equalization Agreement.[1] The facts giving rise to the claim are not in dispute.

In 1939, petitioner, a non-land-grant railroad, and the United States entered in a Freight Land-Grant Equalization Agreement (R. 4-6) wherein petitioner agreed (R. 4)

> * * * to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from lawful rates filed with the Interstate Commerce Commission or the various State Commissions applying from point of origin to destination at time of movement.

Between August 3, 1940 and August 28, 1942, petitioner transported over its lines certain freight

---

[1] This case now involves the sum of $20,224.78, since certain claims asserted in Union Pacific's petition to the Court of Claims have been withdrawn (R. 13; Pet. 2).

shipments for the United States between Ogden, Utah and Portland, Oregon (R. 9). At the time of these shipments there were available under the published tariffs four routes between Ogden and Portland (R. 10): (1) Union Pacific route via Pocatello, Idaho, shown in yellow on map attached to the petition; (2) Union Pacific-Northern Pacific route via Silver Bow, Montana, shown in green; (3) Southern Pacific route via Fernley, Nevada and Alturas, California, shown in red; (4) Southern Pacific route via Fernley, Nevada and Roseville, California, shown in blue. Prior to 1926, the only route of the Southern Pacific Company between Ogden and Portland was via Roseville, a distance of 1336.66 miles, including 663.16 miles of land-grant mileage (R. 8). The land-grant deduction based on the percentage of land-grant mileage in this route was 24.807% (R. 8). In the period 1926-1929, the Southern Pacific Company shortened the route between these terminals. This newer route was composed of the original main line from Ogden to Fernley, then a cut-off via Alturas to a point on the main line near Eugene, Oregon, thence to Portland, a total distance of 1103.4 miles, including 126.14 miles of land-grant mileage (R. 8). The land-grant deduction for freight moved over this route, if based exclusively on the land-grant mileage contained therein, would be 5.715% (R. 16).

The shipments involved in this claim consisted of public property for which the United States was entitled to reduced rates for its transportation over land-grant railroads (R. 10). Pursuant to the Equalization Agreement, therefore, petitioner submitted bills for its transportation services computed on the basis of net land-grant rates (R. 10). In computing such rates, petitioner used the published tariff rates for the newer Southern Pacific route via Alturas and made a 5.715% land-grant deduction, based on the percentage of land-grant mileage contained in that route (R. 11, 16). The Government's accounting officers, however, took a different view of the requirements of the Equalization Agreement, and made payment on the basis of lower net rates. Such rates were constructed by using as gross rates the lawfully published tariff rates for the Southern Pacific Alturas route, with a 24.807% land-grant deduction based upon the percentage of land-grant mileage contained in the original Southern Pacific route via Roseville (R. 12, 16).

In April, 1946, petitioner filed suit in the Court of Claims for the difference in the amount paid by the United States and the amount due according to its own computation, contending that if the Government used the rates applicable via one route, the percentage of land-grant deductions to be made from such rates must be determined on the basis of land-grant mileage in that same route (R.

1-4). The court below denied recovery and dismissed the petition (R. 19).

ARGUMENT

The only issue here is whether petitioner's method of computing net land-grant rates for terminal to terminal transportation or the method used by the Government is correct. This depends on whether the lower net rates arrived at by respondent were "lawfully available" to the Government under the Equalization Agreement or, in other words, whether Southern Pacific would be entitled to any higher rate for the transportation of the same freight between the same points. We submit that the decision below, approving the method employed by the United States, is plainly correct, and that the question is not one of any general importance. In this circumstance, review by this Court is not warranted.

1. Since it is the policy of the Government to move federal property at the lowest available rates, it declined, when land-grant deductions were available, to use higher cost non-land-grant routes. 22 Comp. Dec. 129, 130. In order, therefore, to obtain as large a share of government traffic as possible, many non-land-grant roads entered into "freight land-grant equalization agreements" with the Government. See *Southern Railway Co.* v. *United States,* 322 U. S. 72, 73; *Southern Pacific Co.* v. *United States,* 307 U. S. 393, 394, fn. 1. Such an agreement (R. 4-6) is involved here. In it, peti-

tioner agreed "to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available * * *" (R. 4). *Supra*, p. 3.

Since at the time of the shipments involved here there was a land-grant road, the Southern Pacific, between Ogden and Portland, it is not disputed that respondent was "lawfully entitled to reduced rates" on shipments of government property between these terminals. The question is as to the method of computing these reduced rates. In our view, the decision in *Southern Pacific Co.* v. *United States*, 307 U. S. 393, is precisely analogous and dispositive of the issue here. In that case, the Southern Pacific, a land-grant carrier, had two lines between Portland and San Francisco. The two routes were identical for a considerable portion of the distance between these terminals. The older line was called the Siskiyou Route and contained more land-grant mileage than the newer or Cascade Route. This Court held that the Government, in computing the compensation due a land-grant carrier for terminal to terminal transportation, was entitled to deduct from the lower tariff rates available on the newer route the higher land-grant percentage deduction applicable to the original route. See also *United States* v. *Northern Pacific Railway Co.*, 30 F. 2d 655 (C. A. 8). An iden-

tical method of computation was employed by the United States in the present situation,[2] and the rationale of the *Southern Pacific* case compels the conclusion that the rates arrived at by respondent would have been the proper transportation charges had the Government shipped via the Southern Pacific. Thus, the net rates computed by respondent were "lawfully available" to the Government and under the terms of the Equalization Agreement petitioner was entitled to no more than the "net rates which a land-grant carrier would be entitled to receive for such transportation service" (R. 17). Moreover, the Government's accounting officers were required to make payment on the basis of the lower net rates since it cannot be assumed that the Government, in entering an equalization agreement, intended to grant "the equalizing carriers more favorable rates than those to which it was lawfully entitled on the land-grant routes." *Southern Railway Co.* v. *United States,* 322 U. S. 72, 76.

It is petitioner's contention that if respondent uses the lower tariff rates applicable to the Southern Pacific route via Alturas, the land-grant deductions to be made from such rates must be determined from the percentage of land-grant mileage

---

[2] In computing its terminal to terminal net rates, respondent used the lower tariff rates available on the Alturas route of the land-grant Southern Pacific, and made land-grant deductions on the basis of the higher percentage of land-grant mileage in that carrier's older route via Roseville (R. 12, 16). *Supra,* pp. 4-5, 7.

in that route; that tariff rates are inseparable from their particular route; and that respondent's net rates, therefore, are not derived from "lawful rates" as required by the Agreement since respondent "has taken the rates available under the tariffs via Alturas and has applied them via Roseville" (Pet. 8, 9). But these are the same arguments advanced by the petitioner in the *Southern Pacific* case and explicitly rejected by this Court. The present petitioner's argument would require an overruling of that case which, we submit, is sound, requires no defense on our part, and need not be reexamined at this late date.[3]

2. This case is of no general or prospective importance. The Transportation Act of September 18, 1940, 54 Stat. 898, Sec. 321 (49 U. S. C. 65(a) relieved land-grant railroads of the obligation to carry persons or property for the United States at reduced rates, except military or naval property of the United States moving for military or naval and not for civil use. The Act of December 12, 1945, c. 573, 59 Stat. 606, effective October 1,

---

[3] In an attempt to distinguish the *Southern Pacific* case, petitioner states (Pet. 10) that the Southern Pacific Company was a land-grant carrier and was under a statutory obligation to transport government property at reduced rates. Petitioner then asserts that "this is an altogether different case. The Union Pacific is not attempting to avoid any statutory obligation to carry Government freight at reduced rates" (Pet. 11). Such a distinction is wholly immaterial. Petitioner's contractual obligation to transport government freight for the same rates which a land-grant carrier would be entitled to receive is equally binding.

1946, repealed all land-grant rates. So far as we know, very few land-grant cases are pending and only one, referred to by petitioner at p. 2 of its petition, is pending which involves the precise question here presented. It is extremely doubtful that, in the short period of time remaining before the limitations period expires (October 1, 1952), any other case involving this question will arise. After that date, no new cases of this character can be filed.

CONCLUSION

The decision below is correct, and there is no conflict of decisions. The matter is not one of general importance. It is respectfully submitted that the petition for a writ of certiorari should therefore be denied.

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
PAUL A. SWEENEY,
RICHARD P. WILLIAMS, III,
Attorneys.

APRIL 1950.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1950 891279 000